
OPINION OF THE PUBLIC ACCESS COUNSELOR

SHARA B. HOSTETLER,
Complainant,

v.

CITY OF SOUTHPORT CLERK-TREASURER,
Respondent.

Formal Complaint No.
18-FC-134

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging that the City of Southport Clerk Treasurer violated the Access to Public Records Act.¹ Attorney Daniel J. Paul filed an answer to the complaint on behalf of the Clerk. In accordance with Indiana Code Section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 22, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute between the Southport Clerk-Treasurer and a city council member over access to public records.

Shara Hostetler (“Complainant”), at-large member of the Southport City Council, filed a formal complaint alleging the Southport Clerk-Treasurer (“Clerk”) violated the Access to Public Records Act (“APRA”) by refusing to make copies of public records, having a police officer oversee the inspection of records, providing records with a “not an official document” stamp, and the denial of another document.

In August 2018, Hostetler went to the Clerk’s Office to obtain a number of fuel receipts that she previously requested. She was denied access to the office copier and forced to take pictures with her cell phones. The receipts numbered in the hundreds. Additionally, a law enforcement officer was placed with her while the receipts were inspected.

Other documents requested by Hostetler have been marked with a “not an official document” stamp. She has also allegedly been denied other documentation which was not specified in the complaint. Finally, Complainant was required to sign an acknowledgement receipt. She did so, but indicated there were missing records. She was refused the documents when she added the missing records note.

The Clerk responded by arguing a copies would have been provided had Hostetler remitted the requisite \$0.10 per page copy fee and that otherwise inspection was sufficient. It further argues that the presence of a law enforcement officer was appropriate for the location of the records.

The Clerk additionally contends that the file stamp is not a violation of the APRA; that other documentation requested does not exist; and signing a receipt for the documents is appropriate.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1.

The City of Southport’s Clerk’s Office is a public agency for purposes of APRA; and therefore, is subject to the Act’s requirements. *See* Ind. Code § 5-14-3-2(q). Thus, unless an exception applies, any person has the right to inspect and copy the Clerk’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

1.1 Practical Considerations

It bears repeating that this dispute has arisen between two public officials. Regardless of prior disputes, elections, controversies or issues, bad blood should never enter into the public access conversation. Nor is public access or the complaint process of this Office to be used as leverage by any side.

This Office is well aware of those prior and pending episodes and is a proponent of good governance first and foremost as public access is a predicate to a democratic government. That consideration certainly colors and influences this opinion.

1.2 Copying of Public Records

Hostetler first alleges that the Clerk's office copier was not available to make reproductions of receipts as she inspected the records and was instead told to use her cell phone to take pictures.

Indiana Code Section 5-14-3-3(a) states that any person may inspect and copy public records of any public agency during the regular business hours of the agency. If practicable, the individual seeking the records has the option whether they want to pay for copies or merely inspect.

The Clerk alludes to giving the option of copying for a fee, but Hostetler appears to claim she never had that option and cell phone pictures were the only method of taking the documentation with her.

Whichever is true, the requestor always can dictate the method of access, something to keep in mind going forward.

1.3 Supervision of Inspection

It is not uncommon for requesters to be supervised by municipal personnel while inspection takes place. While not explicitly addressed by the APRA, any barrier to access could be construed to be an intentional interference with the right to inspect a record.²

It does not appear as if the presence of law enforcement personnel was an overt attempt to deny or interfere with a record, but the Clerk should be mindful that this could be perceived as intimidation. While security of records and facilities is of utmost importance, so too is the ability of the public to scrutinize public documents.

1.4 Stamping of Records

Certain documents, after being provided to the Complainant were stamped with a “Not an Official Document” indicator.

The definition of public record is quite comprehensive and does not make the distinction between “official” and “non-official.”³ While records are routinely marked “Copy” or “Draft” appropriately, there is simply no such thing as a “non-official” public record. To mark a public document this way could be construed to violate Indiana Code Section 5-14-3-7, which prohibits the alteration of a public record. While it appears as if the intention may have been to indicate

² Ind. Code § 5-14-3-3(b)

³ Ind. Code § 5-14-3-2(r)

the record was non-*certified* or non-*original* calling a public record “non-*official*” only serves to create confusion.

This method of marking public records should be discontinued. A “Copy” watermark or stamp is preferred.

1.5 Withheld Records

Hostetler also contends that certain “statistics and numbers” and other documents have been withheld from disclosure, but does not specify what those may be or when and how they were requested. A sample public records request was provided which may or may not have been these documents, however, they are very broad in nature and would likely be denied on reasonable particularity grounds.

It is well noted that the Clerk argues that numbers and statistics or lists do not generally need to be compiled pursuant to a public records request.

This portion of the complaint is too ambiguous to properly address further at this time.

1.6 Receipt for Collection of Documents

Hostetler’s final contention involves signing a receipt for the receiving of requested documents. She supplemented her signature with an annotation indicated that there were documents missing from the batch of records.

Again, it is unclear what those records are, but keeping a paper trail of receipts upon collection of documents is good business practice. I take no exception to the requirement of a signature upon receiving public documents. It simply me-

morializes the transaction. By the same token, a recipient indicating missing records by supplementing a signature with a comment accomplishes the same on the part of the requester is not a justification for denial.

CONCLUSION

Clearly there are some issues between public officials in the City of Southport. This Office does not trouble itself with who started it or whose fault it is, only that it does not interfere with public access. Whether those issues are due to the residual bitterness of a prior election; lingering resentment over past or pending litigation; or simply friction between personalities or political parties matters not. It serves the public little to have overt antagonism between representative government officials. If anything, the free-flow of information between public officials in the same municipality – who, like it or not, are on the same team – should be a given.

I recommend that public records requests are submitted with an eye toward practicality and particularity. At the same time, I encourage the officials responding to those requests to be mindful of any potential barriers, real or perceived. In any event, both parties should focus on the ultimate goal: effective, efficient, and transparent government.



Luke H. Britt
Public Access Counselor